NITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT APP

/CD 3 0 2002

TILG et al.

Appln. No.: 10/6/2

Group Art Unit: TRAH CENTER

Examiner: TBA

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Filed: December 21, 2001

Title: PROCESS FOR THE PREPARATION OF L-AMINO ACIDS BY FERMENTATION

AND NUCLEOTIDE SEQUENCES CODING FOR THE accDA GENE

August 30, 2002

### **SUBMISSION OF SUBSTITUTE DECLARATION**

Hon. Commissioner of Patents and Trademarks Washington, D.C. 20231

Sir:

Applicants hereby submit the attached Substitute Declaration in the above-identified application. The original Declaration had a defect in the name of one of the inventors. Applicants respectfully request that the attached Substitute Declaration be entered.

Respectfully submitted,

PILLSBURY WINTHROP, LLP

Richard A. Steinberg

Reg. No.: 26,558

Tel. No.: (703) 905-2039 Fax No.: (703) 905-2500

RAS/amx 1600 Tysons Boulevard McLean, VA 22102 (703) 905-2000

Enclosure:

Substitute Declaration

# FOR UTILITY/DESIGN

### RULE 63 (37 C.F.R. DECLARATION AND POWER ATTORNEY

PW **FORM** 

ORIGINAL/SUBSTITUTE/SUPPLEMENTAL

FOR PATENT APPLICATION

DECLARATIONS

As a below named inventor, I hereby declare that my residence, post office address and citizenship are as stated below next to my name, and I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the INVENTION ENTITIES FOR THE CONTINUE FOR THE PREPARATION OF L-AMINO ACIDS BY FERMENTATION AND NUCLEOTIDE SEQUENCES CODING FOR THE accDA GENE

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	pecification of which ( <u>C</u> l is attached hereto.	HECK applicable BOX(ES) )			- ~ ~ ~ ~ ~
BOX(ES) →	B. 🛛 was filed on 🔠		U.S. Application No.	10/024,370	SEP 0 5 200
	C.	International Application N	o. PCT/ / per 21, 2001, April 2, 200	on	· · · · · · · · · · · · · · · · · · ·
hereby state that I I bove. I acknowledgoreign priority benef application which de ertificate, or PCT In the application on who will be application on which will be application on who	nave reviewed and underst ge the duty to disclose all ir its under 35 U.S.C. 119(a)- signated at least one other ternational Application, file	and the contents of the above identified formation known to me to be material to (d) or 365(b) of any foreign application( country than the United States, listed be d by me or my assignee disclosing the so (2) if no priority claimed, before the filing	specification, including the patentability as defined in s) for patent or inventor's color elow and have also identifies believe matter claimed in this	claims, as amended by an 37 C.F.R. 1.56. Except a ertificate, or 365(a) of any ed below any foreign applied	s noted below. Thereby claim PCT International cation for patent or inventor's
<u>lumber</u> 99 24 365.4	<u>Country</u> Germany	<u>Day/MONTH/Year Filed</u> 27/May/1999	open or Published		Priority NOT Claimed
xcept as noted belo CT international ap pplication is in addit	ow, I hereby claim domestic plications listed above or b tion to that disclosed in suc	cottom and continue on attached page c priority benefit under 35 U.S.C. 119(e) elow and, if this is a continuation-in-part in prior applications, I acknowledge the ole between the filing date of each such	or 120 and/or 365(c) of the t (CIP) application, insofar a duty to disclose all informat	as the subject matter discl ion known to me to be ma	osed and claimed in this terial to patentability as
	VISIONAL, NONPROV series code/serial no.	ISIONAL AND/OR PCT APPLICA  Day/MONTH/Year Filed		<u>Status</u> , abandoned, patente	Priority NOT Claimed
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orther that these statection 1001 of Title  and I hereby appoint the ersons of that firm wansact all business armes of persons not be person/assignee/	tements were made with the 18 of the United States Consider Williams Winthrop LLP, In who are associated with US in the Patent and Tradema longer with their firm, to a fattorney/firm/ organization	n of my own knowledge are true and the ne knowledge that willful false statement ode and that such willful false statement itellectual Property Group, telephone nu SPTO Customer No. 909 (see below lab ark Office connected therewith and with dd new persons of their Firm to that Cus who/which first sends/sent this case to uct the above Firm and/or an attorney of	is and the like so made are is may jeopardize the validity mber (703) 905-2000 (to will be individually and collective the resulting patent, and I hastomer No., and to act and rethem and by whom/which I	punishable by fine or imputy of the application or any mom all communications a ely my attorneys to prosecue by authorize them to dely on instructions from an hereby declare that I have	isonment, or both, under patent issued thereon.  The to be directed), and cute this application and to elete from that Customer No. and communicate directly with
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esidence	Munnertal	Germany		Germany	
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lailing Address	Schönebech	erstraße 71, Wuppert	al, Germany		
nclude Zip Code)	42283				<u></u>
2) INVENTOR'S			Date:		
lame	Bernhard		EIKMANNS		•
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nclude Zip Code)		*			
	TIONAL INVENTO	RS see attached page. s on attached page (incorpo		Okt. No. <u>P028413</u>	39 #)
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### FOR UTILITY/DESIGN CIP/PCT NATIONAL/PLANT ORIGINAL/SUBSTITUTE/SUPPEMENTAL 0 2002

### RULE 63 (37, C.F. DECLARATION AND POWER OF ATTORNEY FOR PATENT APPLICATION

PW **FORM** 

DECLARATIONS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

As a below named inventor, I hereby declare that my residence, post office address and citizenship are as stated below next to my name, and I believe I am the original, first and sole inventor (if plural names are listed below) or an original, first and joint inventor (if plural names are listed below).

below) of the sub PREPARATION	oject matter which is claim OF L-AMINO ACIDS BY	ed and for which a patent is sough FERMENTATION AND NUCLEO	nt on the <u>INVENTION ENT</u> TIDE SEQUENCES COD	TTLED: PROCESS FOR THE ING FOR THE accDA GENE	
the	specification of which (CH	ECK applicable BOX(ES) )			
X A. [	is attached hereto.				
	B. was filed on D	ecember 21, 2001 as	U.S. Application No 1	0/024,370	
→ →	C. ☐ was filed as PCT	nternational Application No		on	
I hereby state that i	to U.S. or PCT application	n) was amended on December	er 21, 2001, April 2, 2002		
foreign priority bene Application which d certificate, or PCT I	age the duty to disclose all into efits under 35 U.S.C. 119(a)-(o esignated at least one other o nternational Application, filed	ormation known to me to be material to i) or 365(b) of any foreign application(so country than the United States, listed be	patentability as defined in 37  for patent or inventor's certicles  and have also identified in this a	aims, as amended by any amendment referred C.F.R. 1.56. Except as noted below, I hereby ficate, or 365(a) of any PCT International below any foreign application for patent or invespelication and having a filing date (1) before the	/ claim
PRIOR FOREIGI	N APPLICATION(S)		Data first Laid	Data Batanta d	
Number	Country	Day/MONTH/Year Filed	Date first Laid- open or Published	<u>Date Patented</u> <u>or Granted</u> <u>Priority NOT Clai</u>	imed
199 24 365.4	Germany	27/May/1999	opon or r abnonca	RECEIVED	<b>)</b>
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PCT international a application is in add	low, I hereby claim domestic p pplications listed above or bel lition to that disclosed in such	trom and continue on attached page priority benefit under 35 U.S.C. 119(e) ow and, if this is a continuation-in-part prior applications, I acknowledge the dependent of the priority of the such prior	or 120 and/or 365(c) of the ind (CIP) application, insofar as the index of the inde	dicated United States applications will be the the the subject mattered screen and bearing the subject mattered in this known to me to be material to patentability as nal or PCT international filing date of this	[ <del>5</del> 600
PRIOR U.S. PRO	VISIONAL, NONPROVIS	IONAL AND/OR PCT APPLICAT	ION(S)	Status Bright, NOT Clair	
Application No.	(series code/serial no.)	Day/MONTH/Year Filed		<u>Status</u> <u>Priority NOT Clai</u> bandoned, patented	mea
I hereby declare tha	it all statements made herein	of my own knowledge are true and than	all statements made on information	mation and belief are believed to be true; and	
rurmer mat mese st	atements were made with the	knowledge that willful false statements	and the like so made are our	mation and belief are believed to be true; and nishable by fine or imprisonment, or both, unde f the application or any patent issued thereon.	er
transact all business names of persons n the person/assigned	who are associated with USPs in the Patent and Trademant o longer with their firm, to add attorney/firm/ organization w	TO Customer No. 909 (see below labe Office connected therewith and with the new persons of their Firm to that Cust	<ul> <li>individually and collectively ne resulting patent, and I here omer No., and to act and rely nem and by whom/which I here</li> </ul>	n all communications are to be directed), and my attorneys to prosecute this application and by authorize them to delete from that Custome on instructions from and communicate directly reby declare that I have consented after full rary.	or No
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Mailing Address	Heideweg 17, Mettn	lann, Germany			
(include Zip Code	) D-40822				
(2) INVENTOR'S	SIGNATURE:	end Etenam	Date:	07/15/2012	
Name	Bernhard /		EIKMANNS	•	
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☑ FOR ADDI	TIONAL INVENTOR	S see attached page.		-	

See <u>additional foreign priorities</u> on attached page (incorporated herein by reference).

Atty. Dkt. No. P0284139

(M#)

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AUG 3 0 2002 ECLARATION AND POWER OF ATTORNEY

(continued)
ADDITIONAL INVENTORS:

SEP 0 5 2002

(3) INVENTOR	R'S SIGNATURE:	PADEMAP .	Lail	Date: $\frac{11100}{100}$ TECH CENTER 1600
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ARATION AND POWER OF ATTORNEY
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ADDITIONAL INVENTORS

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(9) INVENTOR'	S SIGNATURE:			Date:	·
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AUG 3 [] 2002 PRUIE 56(a) & (b) = 37 C.F.R. 1.56(a) & (b)
PATENEAND TRADEMARK CASES - RULES OF PRACTICE
DUTY OF DISCLOSURE

SEP 0 5 2002

(a) ... Each individual cancelled with the filing and prosecution of a patent application has a dipolic cancelled with the [Patent and Trademark] Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability...(b) information is material to patentability when it is not cumulative and (1) It also establishes by itself, or in combination with other information, a prima facie case of unpatentability of a claim or (2) refutes, or is inconsistent with, a position the applicant takes in: (i) Opposing an argument of unpatentability relied on by the Office, or (ii) Asserting an argument of patentability

### PATENT LAWS 35 U.S.C.

### §102. Conditions for patentability; novelty and loss of right to patent

A person shall be entitled to a patent unless-

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent or
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or
- (c) he has abandoned the invention, or
- the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application-for-patent or inventor's certificate filed more than twelve months\* before the filing of the application in the United States, or
- (e) the invention was described in
  - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
  - a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a); or
- (f) he did not himself invent the subject matter sought to be patented, or
- (g) (1) during the course of an interference conducted under section 135 or section 291, another inventor involved therein establishes, to the extent permitted in section 104, that before such person's invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or
  - before such person's invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

### §103. Condition for patentability; non-obvious subject matter

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made. . . .
- (c) Subject matter developed by another person, which qualified as prior art only under one or more of subsections (e), (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

<sup>\*</sup> Six months for Design Applications (35 U.S.C. 172).